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18 IN THE UNITED STATES BANKRUPTCY COURT
19 FOR THE DISTRICT OF OREGON

20 In re Chapter 13
21 **Eugene Tyrone Alwine,** No. 09-39313-rld13
22 Debtor. **OBJECTION TO CONFIRMATION OF**
CHAPTER 13 PLAN DATED NOVEMBER
23, 2009
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27 Hearing Date: January 28, 2010
28 Hearing Time: 9:00 a.m.
29 Hearing Location: US Bankruptcy Court,
30 Courtroom # 3

31 CNH Capital America LLC (“CNH”) objects to confirmation of the debtor’s proposed
32 Chapter 13 Plan dated November 23, 2009 (the “Plan”), on the grounds that it does not
33 accurately state the full amount of CNH’s claim. In support of this objection, CNH alleges as
34 follows:

35 1. On or about August 2, 2005, debtor Eugene Tyrone Alwine (“Alwine”) executed
36 a Retail Installment Contract and Security Agreement for the purchase of a Hitachi Excavator,
37 Model EX120-3, serial number 42564 (“2005 Agreement”). Under the terms of the 2005
38 Agreement, Alwine agreed to make monthly of \$653.35 beginning on September 15, 2005, with
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1 a final payment of \$652.67 due on August 15, 2010.

2 2. On or about November 30, 2004, 9-Mile Construction & Excavation, Inc. (“9-
3 Mile”), Alwine’s company, executed a Retail Installment Contract and Security Agreement for
4 the purchase of a Takeuchi Track Loader, Model TL130, serial number 21301629 (“2004
5 Agreement”). Under the terms of the 2004 Agreement, 9-Mile agreed to make four monthly
6 payments in the amount of \$709.14 beginning on January 14, 2005, with a final payment of
7 \$708.83 due on or before December 14, 2009.

8 3. On or about March 7, 2006, Alwine executed a Retail Installment Contract and
9 Security Agreement on behalf of 9-Mile for the purchase of a Takeuchi Excavator, Model
10 TB145, Serial Number 14514744 (“2006 Agreement”). Under the terms of the 2006 Agreement,
11 9-Mile agreed to make monthly payments in the amount \$954.54 beginning on April 20, 2006,
12 with a final payment of \$954.09 due on or before March 20, 2011.

13 4. The Agreements are cross collateralized. At the time of filing, Alwine owed
14 \$46,826.57.

15 5. In paragraph 2 of the Plan, Alwine lists the value of CNH’s collateral as
16 \$32,000.00.

17 6. CNH objects to the confirmation of the Plan and its treatment of the collateral
18 securing the 2004 Agreement and the 2006 Agreement (collectively, the “9-Mile Agreements”)
19 on the basis that Alwine does not have an interest in the collateral secured by the 9-Mile
20 Agreements. In paragraph 2 of the Plan, Alwine identifies the Takeuchi Track Loader TL130 as
21 collateral of the bankrupt estate. Alwine, however, does not have an interest in the collateral
22 securing the 2004 Agreement because 9-Mile, not Alwine, executed the 2004 Agreement.
23 Similarly, in paragraph 2 of the Plan, Alwine identifies the Takeuchi Excavator TB145 as
24 collateral of the estate. Likewise, Alwine lacks any interest in the collateral securing the 2006
25 Agreement as 9-Mile executed the 2006 Agreement. CNH reserves the right to pursue its
26 remedies against 9-Mile under the 9-Mile Agreements.

7. In the event that the court finds that Alwine has an interest in the collateral
under the 9-Mile Agreements, CNH objects to confirmation of the Plan on the basis that the
value of CNH's collateral is \$53,500.00. CNH is entitled to payment of the full amount of its
interest plus post-confirmation interest at the rate of 9.5% per annum.

8. Notwithstanding the court's treatment of the 9-Mile Agreements, CNH further
3 to confirmation of the Plan on the basis that the value of CNH's collateral under the 2005
ment is \$28,000.00. CNH is entitled to payment of the full amount of its claim, plus post-
nation interest at the rate of 9.5% per annum.

Dated this 25th day of January, 2010.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Alex I. Poust
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Of Attorneys for Creditor, CNH Capital
America LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2010, I served the foregoing

3 OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN:

by delivering a true and correct copy thereof via ECF to:

- PATTI H BASS ecf@bass-associates.com
- Brian D. Lynch c0urtmail@portland13.com, c0urtmail@portland13ct.com
- ANDREW R NAYLOR anaylor@sglaw.com, epaetsch@sglaw.com
- ALEX I POUST apoust@schwabe.com, dsalt@schwabe.com;docket@schwabe.com
- TODD TRIERWEILER oreccf@bankruptcylawctr.com, oreccf@whiz.to
- US Trustee, Portland USTPRegion18.PL. ECF@usdoj.gov
- JAMES ^MIERSMA ecfor@rcflegal.com

DATED this 25th day of January, 2010.

/s/ Alex I. Poust
Alex I. Poust, OSB #925155